

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRICKLAYERS PENSION TRUST FUND
– METROPOLITAN AREA, et al.,

Plaintiffs,

Case No. 06-15700

v.

Honorable Patrick J. Duggan

ORLANDO & SONS, INC., and ANDREW
ORLANDO,

Defendants.

**OPINION AND ORDER GRANTING MOTION FOR
ENTRY OF AMENDED JUDGMENT**

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on June 10, 2008.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

Plaintiff, a group of trust funds established under and administered pursuant to the Labor Management Relations Act, 29 U.S.C. §§ 141-187, and the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1001-1461, initiated this action against Orlando and Sons, Inc. and Andrew Orlando (collectively “Defendants”), alleging that Defendants violated 29 U.S.C. § 1145 of ERISA when they failed to make contributions as required by a collective bargaining agreement entered into with Bricklayers’ and Mason’s Union Local 1. Presently before this Court is Plaintiffs’

Motion for Entry of Amended Judgment, which was filed on May 8, 2008.¹

On April 24, 2008, this Court entered, by stipulation of the parties, a Consent Order Re-Opening Case and Entry of Consent Judgment (“Consent Order and Judgment”). The Consent Order and Judgment entered judgment in favor of Plaintiffs against Defendants. In addition, and as relevant to the present motion, the Consent Order and Judgment provides:

Plaintiffs are also awarded attorneys’ fees and costs incurred by Plaintiffs in the prosecution of this matter, pursuant to ERISA 502(g)(2), 29 U.S.C. 1132(g)(2), and are hereby granted leave to file a Motion for Amended Judgment, which shall be accompanied by an affidavit of plaintiffs’ counsel setting out all amounts determined to be due pursuant to the provisions of this judgment.

(Consent Order & Judgment 5.) Attached to Plaintiffs’ motion is an affidavit from Ms. Hope Calati, Plaintiffs’ counsel, setting forth the amounts of attorneys’ fees and costs incurred by Plaintiffs’ counsel in litigating this case. In addition, Plaintiffs’ counsel has attached billing records, the applicable hourly rates, and summaries of the experience of each of the attorneys who expended time on this matter. Finally, Plaintiffs’ counsel has attached an economic survey published by the Michigan Bar Journal reflecting the

¹Although there has been no formal appearance filed by counsel for Defendants filed in this action, attorney R. Timothy Kohler signed the stipulation regarding the entry of the Consent Order and Judgment that was filed with this Court on April 24, 2008. (*See* Doc. No. 11.) Moreover, Plaintiffs have filed a Certificate of Service with their Motion for Entry of Amend Judgment, certifying that on May 8, 2008, Plaintiffs sent Mr. Kohler a copy of their Motion for Entry of Amended Judgment, as well as the attachments, by e-mail and first class mail. (Doc. No. 12 at 9.) Nevertheless, Defendants have not responded to Plaintiffs’ Motion for Entry of Amended Judgment, and the time for response has expired. *See* E.D. Mich. LR 7.1(d)(2)(B) (providing that a response to a “nondispositive motion” must be filed within 14 days after service of the motion).

average attorney hourly rates for the year 2000. In total, Plaintiffs' counsel requests \$4,543.00 in attorneys' fees and costs.

ERISA expressly provides that reasonable attorneys' fees and costs are mandatory where there is a decision enforcing contribution obligations. 29 U.S.C. § 1132(g)(2).² The Court, having carefully considered the attachments submitted by Plaintiffs' counsel, concludes that \$4,543.00 is a "reasonable" amount of attorneys' fees and costs.

Accordingly,

IT IS ORDERED that Plaintiffs' Motion for Entry of Amended Judgment is **GRANTED**.

A separate Amended Judgment will issue.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:
George H. Kurszewski, Esq.
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²This provision provides in relevant part:

In any action under this title by a fiduciary on behalf of a plan to enforce section 1145 of this title in which a judgment in favor of the plan is awarded, the court shall award the plan –

. . . .

(D) reasonable attorney's fees and costs of the action, to be paid by the defendant

29 U.S.C. § 1132(g)(2).